Crl.A. 244/2002
BEFORE
THE HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr.R.P.Kakati, learned counsel for the appellant and Mr. D.Das, learned P.P., Assam.

The accused appellant stands convicted vide judgment and order dated 26.04.2002 passed by the learned Addl Sessions Judge No.2, Sivasagar in Sessions Case No.64(S-S)2001 (new) corresponding to Sessions Case No.86(S-S)94 convicting the accused under Section 304 Pt I IPC and sentencing to undergo rigorous imprisonment for five years and to pay fine of Rs.500/-, in default, to undergo imprisonment for another two months. Hence, the present appeal.

The prosecution case is that on 26.12.93 around 5 P.M. while Ram Prabash and Sambhu Prasad ( since deceased), employees of Lakowa construction Company were returning to their camp and while they were passing in front No.3 GGS, the accused appellant accosted them and demanded money from them and on their refusal, the accused forcibly took them to his house and tied them with rope and thereafter assaulted them. Ramprabash could some how escaped and came to the camp and reported the incident whereupon the other employees of the Company came to the house of accused Kartik and found Sambhu being kept tied to a post in a unconscious. They got the injured released and took him to hospital wherefrom he was sent to Dibrugarh Medical College and Sambhu succumbed to the injury. The FIR was lodged by the employer Putu Baruah.

So far the death of Sambhu as a result of the injury sustained by him is concerned, we find that the postmortem was conducted by Dr.Hemanta Kr. Mahanta (PW-6) and the doctor found as follows:

A male body of average built wearing one ganjee with trouser and underpant.
Rigor mortis present in all limbs.
Post mortem hypostasis on back.
Injury No.1 : Lacerated wound 3 cmx0.2cm skull deep on left parietal area 5 cm left of midline and 8 cm above the eye brow. Found stitches with four stitches. Hemorrhage under scalp present on the left partial temporal area.
Skull : Fishurrued fracture of the left parital and temporal bone from midline to the antrum.
Extra dural haemaroma 8 cm x 7 cm x 2 cm from left parito temporal area with flattening the brain.
Brain : Congested. Contusion of the left temporal and parital area 6 cm x 5 cm in size.
All other organs are healthy.
Stomach : was empty.
Opinion : Death was due to comma resulting from head injury which was antemortem and caused by blunt impact.

The medical evidence have not been challenged by way of cross-examination. In the present case, we find that there is no eye witness to the incident. The sole eye witness Ramprabash left Lakowa after the incident and from the record we find said Ramprabash was not traced out although soon after the incident his statement under section 164 Cr.P.C. was recorded.

Putu Barua (PW-1), is the employer of the deceased and it was he who lodged the FIR. He supported the contents of the FIR. Diganta Mishra (PW-2), Bhupen Bora (PW-3) are two other witnesses, who have deposed that on the date of occurrence around 5 P.M. while they were in the camp, they were reported about the incident of assault upon Sambhu by Ram Prabash and thereafter both of them went to the house of the accused. There they saw Sambhu tied with rope against a post in the cowshed. They also saw bleeding injury on the head of the deceased. They untied and brought him to Sibsagar Civil Hospital from where he was shifted to Assam Medical College, Dibrugarh and Sambhu succumbed to the injuries at Assam

Medical College Hospital, Dibrugarh. We find that the evidence of these two witnesses have not been challenged by way of cross-examination. Thus, their evidence remained unchallenged. We find that the deceased was found tied with rope in the house of the accused with injuries on head in senseless condition. Although, the circumstance was put, the accused in his statement under Section 313 Cr.P.C. has not uttered a single word as to how the deceased Sambhu, who was a stranger having no relationship with the accused, was found tied in his house with injuries.

Learned counsel for the appellant has strongly submitted that non-examination of Ramprabash must be considered fatal to the prosecution. We find that other witnesses have deposed that Ramprabash left the place and is untraceable and that part of the statement have not been disputed by the defence and when the absence has been explained by the prosecution, no inference can be drawn.

In view of the above, we hold the conviction of the accused under Section 304 Pt.-I IPC needs no interference. The accused has been sentenced to imprisonment for seven years. We find that the accused person was in jail custody from 26.07.93 to 19.08.93 and thereafter he is in jail custody since 20.04.2002. Thus, he is in jail custody for about 4 years and on consideration of the fact that the accused had no intention to cause death, but unfortunately the injury on the head proved fatal, we reduce the sentence to the period already undergone by him. The accused may be released from jail forthwith, if not wanted in connection with any other case.

The appeal stands disposed of with the above modification in sentence.

Send down the records.